

Before the
 OCT 7 12 03 PM '98 **FEDERAL COMMUNICATIONS COMMISSION** FCC 98I-41
 Washington, D.C. 20554

In re Applications of)	MM Docket No. 90-323	90022
)		
HS COMMUNICATIONS)	File No. BPH-880505MZ	
)		
STACY C. BRODY)	File No. BPH-880505NO	
)		
CRAIG L. SIEBERT)	File No. BPH-880505PM	
)		
For Construction Permit for)		
a new FM Station on Channel 271A)		
Virginia Beach, Virginia)		

ORDER

Adopted: October 6, 1998 ; Released: October 7, 1998

By the Assistant General Counsel, Administrative Law Division:

1. This Order grants the Joint Request for Approval of Settlement Agreements filed February 6, 1998, and Supplemented on February 11, 1998 and March 19, 1998, by Craig L. Siebert, HS Communications, Inc., and Stacy C. Brody, as well as the Petition for Leave to Amend filed February 6, 1998, and Supplemented March 12, 1998 and September 9, 1998 by Siebert. Comments were filed by the Mass Media Bureau on May 12, 1998, June 26, 1998, and September 18, 1998.

2. By its Memorandum Opinion and Order, 8 FCC Rcd 3237, recon. denied 8 FCC Rcd 8436 (1993), the Commission affirmed the Review Board's Decision, 7 FCC Rcd 6448 (Rev. Bd. 1992), granting Brody's application. Thereafter, Siebert filed a Petition for Further Reconsideration, and HS filed an appeal of the Commission's denial of its application with the United States Court of Appeals for the District of Columbia Circuit (Case No. 94-1006). By its Order of August 12, 1994, the Court of Appeals remanded this case to the Commission for further consideration in light of Bechtel v. FCC, 10 F. 3rd 875 (D.C. Cir. 1993), which held that the integration of ownership into management criterion used by the Commission to decide among competing applicants was unlawful.

3. The remaining applicants have now entered into settlement agreements which they have attached to their Joint Request. Pursuant to those agreements, the applications of HS and Brody would be dismissed, Siebert would pay \$150,000.00 to HS and \$125,000.00 to Brody, and Siebert's application, as amended, would be granted. Siebert's Petition for Leave to Amend, as supplemented, proposes the relocation of his transmitter site and construction of a new tower. In this respect, Siebert seeks a waiver of 47 C.F.R. § 73.315(a), concerning service to the principle community to be served, but the Bureau has determined that a waiver of that rule

is unnecessary, because, based on the applicant's supplemental alternate prediction of coverage showing, city coverage will be adequate. By his September 9 Supplement, Siebert proposes reduced power emitted in the direction of WRXL, Richmond, Virginia, while otherwise increasing power to the full 6 kilowatts equivalency authorized for a Class A facility, except in the direction of WRXL, and he requests processing pursuant to 47 C.F.R. § 73.215, regarding contour protection for short-spaced assignments. That provision allows operation by short-spaced stations, such as Siebert is proposing, if appropriate contour protection is provided. In response, the Bureau states that it has reviewed Siebert's proposal, as supplemented, and has determined that the new facility will provide adequate protection to WRXL. Furthermore, the Bureau notes that Siebert's new tower has now received a "No Hazard" determination from the Federal Aviation Administration. For these reasons, the Bureau concludes that Siebert's Petition for Leave to Amend may be granted and that his application may be granted, subject to certain conditions specified below.

4. Congress recently enacted Section 3002(a)(3) of the Balanced Budget Act of 1997, Pub. L. No. 105-33, 111 Stat. 251 (1997), which added a new Section 309(l) to the Communications Act of 1934. Section 309(l) requires the Commission, for requests executed during the 180-day period after enactment, to "waive any provisions of its regulations necessary" to permit persons, who, before July 1, 1997, filed competing applications for construction permits for new commercial radio or television stations, to enter an agreement to procure the removal of a conflict between their applications. In accordance with this mandate, the requirements of Section 73.3525(a) pertaining to the amounts to be paid to HS and Brody will be waived in this case. See Gonzales Broadcasting, Inc., 12 FCC Rcd 12253 (1997).¹

5. The applicants have also shown that their Joint Petition complies in all respects with the requirements of 47 U.S.C. § 311(c) and the provisions of 47 C.F.R. § 73.3525(a) which replicate Section 311. The applicants have declared under penalty of perjury that there is no other consideration for the dismissal of these applications, that their applications were not filed for the purpose of reaching or carrying out a settlement agreement, and that approval of the agreement will serve the public interest by facilitating the institution of new FM radio service for Virginia Beach, Virginia and by terminating this litigation. Finally, for the reasons set forth by the Bureau, good cause has been shown, and it is appropriate to grant Siebert's Petition for Leave to Amend.

¹ The applicants' settlement agreements were executed on January 18 and 30, 1998, amended effective February 1, 1998, and filed with the Commission within the five day period specified by 47 C.F.R. § 73.3525(a).

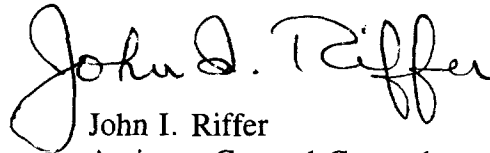
6. ACCORDINGLY, IT IS ORDERED, That, pursuant to the authority delegated under 47 C.F.R. § 0.251(c), the Joint Request for Approval of Settlement Agreements filed February 6, 1998, and Supplemented on February 11, 1998 and March 19, 1998, by Craig L. Siebert, HS Communications, Inc., and Stacy C. Brody IS GRANTED and the attached settlement agreements ARE APPROVED; the Petition for Leave to Amend filed February 6, 1998, and Supplemented March 12, 1998 and September 9, 1998 by Craig L. Siebert IS GRANTED and the amendment, as supplemented, IS ACCEPTED; the Mass Media Bureau's Motion for Permission to Submit Additional Comments filed June 26, 1998 IS GRANTED; the Petition for Further Reconsideration filed January 4, 1994 by Craig L. Siebert IS DISMISSED; the applications of HS Communications, Inc. (File No. BPH-880505MZ) and Stacy C. Brody (File No. BPH-880505NO) ARE DISMISSED; the application of Craig L. Siebert (File No. BPH-880505PM), as amended, IS GRANTED subject to the following conditions:

The facility authorized herein will not be licensed absent the issuance of an Antenna Structure Registration. In this regard, the permittee must include an Antenna Structure Registration authorization along with its FCC Form 302-FM application for license.

Program test authority pursuant to this permit will be conditioned upon (1) the proper installation of the authorized directional antenna and (2) sufficient RF field strength measurements to demonstrate compliance with the FCC's RF field exposure guidelines at the rooftop and throughout the building.

7. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION

A handwritten signature in black ink, reading "John I. Riffer". The signature is fluid and cursive, with the first name "John" and last name "Riffer" clearly legible.

John I. Riffer
Assistant General Counsel
Administrative Law Division
Office of General Counsel